

**TKS INDUSTRIAL COMPANY**  
**(“Seller”)**

**GENERAL TERMS AND CONDITIONS OF SALE**

October 24, 2014

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**TKS INDUSTRIAL COMPANY**  
**("Seller")**

**GENERAL TERMS AND CONDITIONS OF SALE**

**1. Applicable Law and Jurisdiction.** These general terms and conditions apply to all proposals and quotations submitted by Seller ("Proposal"), to all purchase orders received by Seller, and to all goods and services sold by Seller, except as otherwise specifically provided in a document issued by Seller. A Proposal is an offer. This sale or any sale resulting herefrom consists only of these terms and conditions and those in other documents which are referred to herein or are attached hereto or in a document subsequently signed by Seller and referencing this transaction (all of which constitute the "Agreement"). THE AGREEMENT SHALL BE GOVERNED, CONSTRUED AND ENFORCED UNDER THE LAW OF THE STATE OF MICHIGAN INCLUDING THE UNIFORM COMMERCIAL CODE IN FORCE ON THE INITIAL DATE OF THE AGREEMENT ("UCC"), EXCEPT AS PROVIDED HEREIN. The U.N. Convention on the International Sales of Goods shall not apply. Any services to be provided hereunder ("Services"), whether or not they are otherwise ancillary to and part of a sale of goods (as separate units or included in a construction project), shall be considered ancillary to a sale of goods and the UCC shall apply to all goods and Services to be provided hereunder ("Goods"). THE COURTS OF MICHIGAN SHALL HAVE EXCLUSIVE JURISDICTION OVER THE PARTIES AND THE CLAIMS ARISING UNDER OR RELATED TO THE AGREEMENT SUBJECT TO ANY RIGHT OF ARBITRATION WHICH MAY BE PROVIDED BY THE AGREEMENT. The parties stipulate to the convenience of Michigan courts in general, and courts sitting in Oakland County in particular, as to all litigation. Any declaration of unenforceability of a provision shall be as narrow as possible and shall not affect the enforceability of the other provisions.

**2. Formation, Integration and Modification.**

A. Acceptance. The Agreement supersedes all previous quotations and agreements pertaining to the Goods. Delivery to Seller of Buyer's acceptance of a Seller's Proposal (according to its terms), Seller's actions in reliance on Buyer's oral acceptance of a written or oral Proposal, or Buyer's receipt of the Goods, will constitute a binding contract under the terms of the Agreement. The Agreement is subject to Seller's revocation or cancellation without liability within seven (7) days of Buyer's written acceptance.

B. Objection to Other Terms. An order submitted by Buyer orally or in a purchase order or other writing (whether or not it contains terms or conditions modifying, adding to, repugnant to, or inconsistent with these Terms and Conditions), may be accepted, approved or filled by Seller, but any resulting contract and the liabilities or obligations of Seller shall be determined solely by the Agreement, and (unless Seller otherwise advises Buyer in writing) notice is hereby given that Seller objects to any such terms or conditions in Buyer's purchase order or other writing. Seller shall not be deemed to have in any way enlarged or modified its liabilities or obligations under the Agreement by filling such order or by failing to further object to Buyer's terms or conditions.

C. Integration. The Agreement is a final, complete and exclusive statement of the Agreement of the parties. SELLER IS WILLING TO NEGOTIATE WRITTEN CHANGES TO THESE TERMS AND CONDITIONS, BUT RESERVES THE RIGHT TO

MAKE AN ADJUSTMENT IN THE PRICE OF THE GOODS. No modifications, limitations, waivers or discharge of the Agreement or any of its terms shall bind Seller unless in writing and signed by Seller's authorized employee at its home office. Notwithstanding anything to the contrary in this Agreement, no modifications, limitation, waiver or discharge of any provision of the Agreement shall affect Buyer's liabilities and obligations to Seller accrued prior thereto. Seller may correct unilaterally any mathematical and typographical errors in the Agreement. Typed provisions of the Agreement take precedence over printed provisions. A course of performance, course of dealing, or customs in the trade shall not constitute a modification or waiver by Seller of any right.

D. Beneficiaries. The Agreement is only for the benefit of the parties, except all disclaimers and limitations applicable to Seller shall be for the benefit of Seller's agents, employees, contractors, and suppliers. If any other provisions of the Agreement are determined to apply to third parties, all other provisions including limitations, waivers, and disclaimers shall also apply.

E. Prior Sale. Goods quoted to Buyer are subject to prior sale or other commitment.

F. Buyer's Acknowledgment. Buyer and Seller acknowledge that: they are merchants in respect to the Goods; they have had an opportunity to review the Agreement; and the provisions of the Agreement are reasonable when considered as a whole.

3. Authority of Seller's Agents. No agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, waiver, representation or warranty concerning the Goods, not contained in the Agreement. Unless an affirmation, waiver, representation, or warranty is expressly included within the Agreement, it is not a part of the basis of the Agreement and it is not enforceable.

4. Provision of Services. Seller shall provide the materials, equipment, and where applicable, the labor required for the Services strictly in accordance with, and subject to, the Agreement. No other material or equipment of any nature is included in the Agreement including, but not limited to, the price. Buyer acknowledges it has inspected, examined, and studied all plans, specifications, prints, drawings, and material lists furnished by Seller and that it has approved the same, including, without limitation of the foregoing, Buyer's Scope of Work in connection therewith. For the purpose hereof, Buyer's Scope of Work shall mean all site preparation, utility connections, etc., required for the installation of the equipment.

5. Term of Proposal. Unless otherwise provided, a Proposal is subject to acceptance by Buyer within sixty (60) days from the Proposal date.

6. Prices, Payment, Risk of Loss, and Passage of Title.

A. Prices. Prices contained in individual Proposals are firm only for a period of sixty (60) days from the date of the Proposal. Beyond the sixty (60) day period the prices are subject to change, and Buyer should inquire of Seller as to their validity and request a written confirmation or revision. Prices do not include taxes and Buyer shall pay all applicable sales or other taxes levied with respect to Goods (and replacements) and the Agreement, unless exempt therefrom. All prices are in United States dollars. Buyer shall pay all government fees levied on

the installation, inspection, and other Services included on the Goods. Buyer shall pay upon receipt all invoices rendered by Seller for any such fees Seller may pay.

B. Shipment Content. This Agreement is for a shipment contract and the Goods (other than Services) shall be delivered F.O.B. Seller's dock. Whether or not Seller prepays shipping charges, risk of loss passes to Buyer upon tender of the Goods to a carrier. Seller's breach of the Agreement shall not affect the passing of the risk of loss to Buyer notwithstanding any provision of law to the contrary.

C. Firm Prices. Prices reflect expected inflation and are firm for Goods to be delivered within six (6) months from timely receipt of a timely order. For those Goods to be delivered after six (6) months from receipt of an order, adjustments in prices may be made by Seller based on changes in Seller's costs. If any delay in delivery beyond the date of delivery scheduled at the time of entry of the order is requested or otherwise caused by Buyer, Seller shall adjust the price under the provisions of this Subsection. Seller may unilaterally adjust the price to cover increases in the costs of materials occurring after the date of any Proposal or in the cost of its performance because of any change in the law after the date of any Proposal.

D. Price Adjustments. Seller may unilaterally increase prices to cover increased costs (plus reasonable overhead and profit) of design, materials, manufacturing, installation, and other performance by Seller required by changes to the Goods, schedule, *etc.* requested by Buyer after the date of any quotation.

E. Transportation. Except as otherwise provided in the Agreement, Seller shall not be responsible for any freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges arising out of the performance of this Agreement. If such charges are specifically included in the price, any increase in rates becoming effective after the date the price is quoted to Buyer shall be added to the price.

F. Payment. Invoices may be rendered periodically or separately for each shipment (including any early shipment) made by Seller. Buyer shall pay all invoices without retention of any monies for any reason net thirty (30) days after the date of shipment or invoice as instructed by Seller. If retention is permitted under the Agreement shall be paid upon the earlier of written acceptance of the Goods but not later than thirty (30) days from substantial completion of Seller's obligations.

G. Installment Sale. Seller may elect to deliver the Goods in installments. Each installment of Goods to be delivered is to be considered as a separate sale and Buyer shall timely pay the price for each installment which is delivered. Any Goods indicated as backordered now or in the future shall be considered an installment delivery. A failure to pay for an installment within the time for payment is an anticipatory material breach of other installments by Buyer.

H. Interest. All amounts not paid to Seller when due shall incur a carrying charge of 1.0% per month to the extent allowed by law and otherwise at the highest written contract rate allowed by law.

I. Buyer's Delay. All amounts due on installation or other event which requires the action or cooperation of Buyer which Buyer fails to supply timely shall become due upon such failure.

J. Letters of Credit. If this Agreement permits or requires the use of a letter of credit, the letter of credit must be assignable, irrevocable, confirmed by a United States bank in Michigan acceptable to Seller, payable in installments, and require payment to Seller on submission of Seller's invoice and a bill of lading. Buyer shall pay all costs related to the letter of credit.

K. Transfer of Title. Title shall pass upon full payment of the Goods, regardless of the delivery point.

L. Taxes, Permits, Licenses and Bonds. Unless otherwise provided, any tax or import duty imposed by any federal, state, local or municipal authority arising out of either the sale, manufacture or installation of the Goods or performance of the Services covered by the Agreement, is not included in the price in the Proposal, and will be made as an additional charge to be paid by Buyer. All building, erection or other licenses or permits necessary or related to the Goods, shall be secured and paid for by Buyer. If Seller is required to furnish any bond or bonds on account of the execution or fulfillment of the Agreement, the cost shall be added to the quoted price.

M. Price Adjustment. All shipping dates are approximate, based on prompt receipt by Seller of all necessary information and are subject to change by reason of conditions beyond Seller's reasonable control as stated in Article 17. Should Buyer request delay in shipment of the equipment, or after shipment the installation thereof is delayed by Buyer or for any cause beyond Seller's reasonable control, the entire purchase price, less the amount estimated for installation, or any incomplete part thereof or the price of any other incomplete work, shall be due and payable within thirty (30) days after shipment, or if not shipped, thirty (30) days from the date the equipment is ready for shipment. In the event Buyer requires Seller to delay engineering, fabrication, shipment, installation, or start-up of the equipment and/or machinery under the Agreement, Seller shall be entitled to full reimbursement for all costs incurred as a result of such delay.

## **7. Delivery.**

A. Shipment Dates. Shipping and other dates are estimates based on Seller's present engineering, manufacturing, and installation capacity and scheduling, and may be revised by Seller upon receipt or scheduling of Buyer's order. All shipping, installation, and other dates are approximate and shall be computed from the date of entry of the order on Seller's books. All shipping, installation, and other dates are further subject to Seller's prompt receipt from Buyer of a written purchase order or acceptance, letter of credit, down payment, and other conditions as specified in the Agreement, and of all drawings, information and approvals necessary to provide the Goods and to grant any credit proposed in the Agreement.

B. Shipping. Seller shall make the Goods available at the delivery point and, without liability, make such contract for their transportation as Seller decides having regard for the nature of the Goods and other circumstances. On Buyer's request, Seller shall obtain and deliver to Buyer documents necessary to enable Buyer to obtain insurance. Seller is not

responsible to prepay transportation or insurance costs. Buyer shall pay all handling and other charges incidental to transportation. Seller will generally follow Buyer's shipping instructions, but may make reasonable changes thereto without liability and at Buyer's cost.

C. Delivery. Unless otherwise provided, all shipments of Goods (other than Services), shall be made F.O.B. Seller. Title and risk of damage to or loss of Goods shall pass to Buyer upon delivery by Seller to the carrier. Seller assumes no responsibility for loss or damage to the Goods after delivery to carrier. No claim will be allowed unless made by Buyer within seven (7) days from receipt of shipment. The Agreement is based on current freight rates and the price is subject to adjustment in the event that a change in such rates affects Seller's cost of performance hereunder. Prices quoted are for furnishing and shipping, or in accordance with the delivery schedule specified by Seller, the quality or quantities listed for each item. Should shipping releases or schedules be changed for any reason beyond Seller's control, Seller reserves the right to invoice according to quantities or equipment shipped. If Buyer declines or is unable to take delivery at the time(s) specified in the Agreement, Seller shall have the Goods stored for Buyer at Buyer's risk and account, and the Goods shall be considered "shipped." Buyer shall pay storage, handling and re-handling charges and continue to make payments according to the payment terms contained herein.

D. Installation. If installation is a part of the Agreement, the Goods shall be assembled, erected and installed under the personal direction of an employee or the agent of Seller. Buyer shall furnish sufficient electricity, water, air, light, heat, sanitary facilities, and fire protection as well as adequate all-weather storage space, ingress and egress to job site and other items that may be listed under Buyer's responsibilities. The site is to be prepared for installation personnel to work in a normal fashion with no extra equipment or procedures required due to construction or production interferences. Unless otherwise stated, installation shall be performed only during Seller's normal working hours and any overtime work required for any reason shall be requested by and paid for by Buyer.

E. Changes and Differing Conditions.

(i) If there are changes requested by Buyer, or changes in site conditions or installation requirements, or other matters affecting the Goods subsequent to Proposal, the parties shall renegotiate the price to reflect all expenses caused by said changes.

(ii) Buyer, by written order accepted by Seller, may make reasonable changes in the scope of Services subject to equitable adjustments in the Contract price and schedule, including an allowance for increased overhead and profit. Seller is not obligated to incur any expense or do any Services in excess of that reasonably anticipated by Seller unless Buyer issues a written order for such expense and work with mutually acceptable terms and conditions.

(iii) Seller reserves the right to make changes, subject to Buyer's approval, in design or material which in Seller's judgment are for improvement in the Goods and/or its operation.

(iv) In the event Seller is installing equipment and any site conditions or installation requirements at the time of erection differ materially from



those evident at the time of Seller's pre-bid site visit, Buyer's representations, and conditions ordinary to similar projects, then any additional costs caused by the differing site conditions or installation requirements shall be subject to equitable adjustment to the Contract price and schedule.

(v) If activities or operations at Buyer's site by parties other than Seller interfere with the execution of the Services, an equitable adjustment shall be made to the price and schedule.

## **8. Delay of Shipment or Performance Excused for Various Reasons.**

A. Shipment Delay. If shipment of any item or other performance by Seller is delayed at the request of or due to the fault of Buyer, Seller may at its option hold the item at the place of manufacture or elsewhere at the risk and expense of Buyer from the time it is ready for shipment. In the event of any such delay, full and final payment for an item shall be due and payable ten (10) days after Buyer is notified that the item is ready for shipment. If Seller is unwilling to accommodate Buyer by holding such item, Buyer shall accept shipment immediately.

B. Excused Delay. All inspection, delivery, installation, and other dates for Seller's performance are estimates only. In addition, Seller shall not be in default because of its delay or failure to deliver or perform resulting, in whole or in part, from: (i) any foreign or domestic embargoes, seizures, acts of God, insurrections, war, or the adoption or enactment of any law, ordinance, regulation, ruling or order; or (ii) the lack of usual means of transportation, fires, floods, explosions, strikes or any other accidents, contingencies, or events, at Seller's or its supplier's plant or elsewhere (whether or not beyond Seller's control) which directly or indirectly interfere with, or render substantially more burdensome, Seller's production, delivery, or performance; or (iii) delays by Buyer in inspecting and acceptance, in furnishing requested specifications, materials, tooling or information, in making payments, or otherwise. If one or more deliveries hereunder is delayed by reason of any one or more of such occurrences for a period of thirty (30) days, Seller may, at its option, terminate the Agreement as to the undelivered Goods or waive such delay and establish a new delivery schedule.

C. Allocation of Short Supply. Whenever Seller's supply of the Goods, materials or means of production, installation or other performance is insufficient to meet the estimated schedule or in the event of any occurrence mentioned above in Subsections A and B, Seller, in its sole discretion, may allocate its supply to its own use or other customers.

D. Pre-Existing Conditions. This Section shall be effective even as to events described in Subsections A, B and C which exist on the date of a Proposal or of contract formation.

## **9. Inspection, Testing and Rejection.**

A. Inspection Standards. If the Agreement expressly provides for Buyer's inspection and/or acceptance of the Goods, Seller's standard test procedures conducted by Seller's representative shall be the criteria for inspection and/or acceptance, unless other specific procedures have been specified in the Agreement. On request Seller will quote to Buyer

additional charges required to conduct any additional procedures requested by Buyer which may be acceptable to Seller.

B. Buyer's Acceptance of Drawings and Goods. All drawings, specifications, technical documentation, samples, prototypes and Goods shall be deemed approved and/or accepted by Buyer if Buyer does not provide a written objection and/or rejection within seven (7) days (three (3) days as to Goods) of receipt or other reasonable time established by Seller. Buyer shall have seven (7) days (three (3) days as to Goods) after receipt of the item to inspect and either accept or provide notice of objection and/or rejection. If it is rejected, notice must be given to Seller so that it will arrive no later than ten (10) days (seven (7) days as to Goods) after receipt of the item by Buyer. Failure to so act shall constitute an irrevocable acceptance by Buyer of the item. Any objection and/or rejection by Buyer must be in writing and state with specificity all defects and non-conformities upon which Buyer will rely to support its rejection. **ALL DEFECTS AND NON-CONFORMITIES WHICH ARE NOT SO SPECIFIED ARE WAIVED.** If Buyer rejects any tender of the Goods and if requested by Seller, Buyer shall return them to Seller, express, collect, within three (3) days after such request. A failure to so return shall constitute an irrevocable acceptance. No attempted revocation of acceptance shall be effective, and Buyer shall be limited to any available remedies specifically provided in the Agreement for breach of warranty.

C. Inspection Prior to Delivery. If the Agreement requires, or Seller requests in writing, inspection or testing prior to shipment, and upon notification by Seller that the Goods are ready for inspection or testing, Buyer shall provide at the place of manufacturer, at its own expense, one or more qualified and authorized employees to inspect and/or test the Goods, check them for general compliance with the Agreement, and authorize shipment. If Buyer fails to do so within seven (7) days, then Seller may, in its own discretion, determine that Buyer has waived the right of inspection, testing and/or acceptance prior to shipment and ship the Goods. Correction of defects or non-conformities, which would likely have been discovered by Buyer's inspection and/or testing and are otherwise covered by Seller's warranty, will be at Buyer's expense.

D. Inspection and Testing Facilities. Buyer shall provide, at its cost and risk of loss, all materials and other items necessary for any inspection and/or testing required by the Agreement or requested by Seller. If Buyer fails to supply such items within the time required, Seller may supply them at Buyer's expense or test by such means as available at the place of manufacturer. Equipment, parts and materials furnished by Buyer for testing and/or inspection shall be returned to Buyer at Buyer's cost, unless Buyer authorizes their disposal.

E. Shortages. Any claim by Buyer for shortages in any delivery must be in writing with satisfactory written evidence delivered to Seller within seven (7) days of receipt.

F. Inspection Expenses. Any expense incurred by Buyer in the inspection or testing of Goods shall be paid by Buyer, whether or not the Goods have been rejected as defective or non-conforming or the Goods have been accepted and a warranty claim has been made for correction of a defect or nonconformity.

## **10. Survey and Installation.**

A. Site Survey. Seller may assist Buyer or others in a survey or other assessment of the site or project ("Survey"). Seller shall not be responsible for the completion or

accuracy of a Survey regardless of Seller's participation. Seller may rely on the Survey without further investigation. Buyer shall pay Seller its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel expenses for such assistance.

B. Installation. Unless specifically provided in the Agreement, all Goods shall be assembled and installed by and at the expense of Buyer. Seller may furnish, upon request and without additional cost or liability to Seller, written instructions for installing and maintaining, the Goods. At Buyer's request and cost, Seller may furnish personnel and equipment to assist in the installation of the Goods. Buyer shall pay Seller its prevailing per diem rates for such personnel and equipment plus reasonable transportation, food, lodging and other travel expenses. Buyer shall have competent supervisory, maintenance and operating personnel present when Seller's personnel are performing Services. Buyer shall have competent supervisory, maintenance and operating personnel present when Seller's personnel are performing such services. Buyer shall fully prepare the site for installation. Buyer shall provide all electrical connections, installation heat and electricity, air power, space for Seller's trailer, 24-hour access, all permits and compatible labor work site.

C. Adequacy of Site for Services. Buyer assumes all risk of using the Goods in its location and in connection with other equipment or improvements. Seller has no responsibility to determine the adequacy of the building and floor structure, ceiling systems, utilities, skills of Buyer's staff, or other matters.

## **11. General Express Warranties.**

A. Warranty Against Defects. Seller warrants that all Goods which it manufactures and furnishes and work provided will be free from defects in materials and workmanship for a period of twelve (12) months from Buyer's first beneficial use or eighteen (18) months after the first item is shipped, whichever occurs earlier. Seller's sole obligation hereunder is to repair or replace, at Seller's option, any part or component which, after Seller's inspection, proves to be defective. This warranty does not apply to consumable, replaceable parts or components normally subject to wear and replacement.

To the extent that the Goods furnished consist of products manufactured or services provided by other parties, such parties warranty shall be assigned to Buyer to the extent assigned and Seller's responsibility with respect to any such products shall not extend beyond the manufacturer's warranty with respect thereto. If not assignable, Seller shall cooperate with Buyer to process the Buyer's claim to obtain the benefits if the manufacturer's warranty for Buyer and under no circumstances shall Seller's liability of Seller with respect to such products exceed the warranty is repair or replacement at Seller's option and does not include labor, costs to remove, repair or replace components or travel unless specifically provided otherwise.

B. Warranty of Compliance with Specifications. Seller warrants to Buyer that the Goods will be as described in the Agreement in all material respects, subject to the limitations stated herein and Seller's published and internal standards; however, Seller retains the right to change the dimensions, composition, design, performance, color and appearance of the Goods without liability if, in its judgment, the change is nonmaterial. Seller may, in its discretion, also rely on any generally accepted industry standards.

C. **Warranty Conditions.** All of Seller's warranties shall apply only if the Goods: (i) have been installed, maintained, and used in conformity with instructions furnished by Seller from time to time, if any; (ii) have been subjected to normal use for the purpose for which Goods were designed; (iii) have not been subjected to neglect, misuse, negligence, accident or operation beyond the environmental, power, or operating conditions consistent with information provided by Seller and best industry practices; and, (iv) have not been altered or repaired by persons other than Seller in any respect which, in the judgment of Seller, adversely affects the condition or operation of the Goods. Seller's warranty obligations are subject to receipt from Buyer of immediate written notice of any defect containing a full description thereof and Buyer shall not without Seller's approval have attempted to correct the defect.

D. **Performance Warranty.** Seller's sole warranties as to performance are those contained in its Proposal. These warranties are contingent upon the correctness and accuracy of the information provided by Buyer and are based upon the operating conditions specified in Seller's Proposal and the operation and maintenance by properly trained personnel. These guarantees will be deemed satisfied by successful completion of performance tests in accordance with applicable standard procedures as specified in the proposal and in effect on the date of this proposal. Performance tests shall be conducted by Buyer (unless otherwise specified in Seller's proposal), and witnessed by Seller, at its option, within ninety (90) days of initial operation of the equipment. In the event the said tests are not conducted within ninety (90) days of initial operation or within six (6) months of shipment, whichever is earlier, and through no fault of Seller, the equipment shall be deemed accepted by Buyer and in compliance with all contractual requirements. Seller makes no warranty whatsoever as to the inclusion of the equipment supplied by Seller into Buyer's manufacturing process, Seller's warranty being limited solely to the performance of its equipment in accordance with the specifications therefore. In the event the equipment fails to meet the Contract performance guarantees, Seller will supply at its sole option, repaired or replacement parts pursuant to the delivery terms of the Proposal subject to the limitations stated in Article 15.

**12. Patent Express Warranties.** Seller shall defend and indemnify Buyer from any claim which asserts that the Goods or their inherent methods of operation, intrinsically, infringe any United States patent, except as to a claim based on Buyer's use of the Goods as a step in an overall process or as an element in an overall combination. Seller's obligation shall not apply to a claim based on Goods or portions thereof specified, designed, or manufactured by Buyer. Buyer shall notify Seller promptly of any assertions of patent infringement and provide Seller with assistance and information requested by Seller for its defense, or shall have no further obligation to defend or indemnify. Seller shall defend with its counsel or other counsel of its choice and shall have the sole right, without consultation with Buyer, to take all action Seller deems appropriate to prosecute or settle such claims. Seller's exclusive obligation to indemnify as to Goods declared to infringe is limited to the acquisition of a license, the replacement of Goods with non-infringing goods, the modification of the Goods so that they are non-infringing, or the return of the purchase price and shipping costs in exchange for the Goods, as Seller may elect. This Section states Seller's entire and exclusive obligation regarding patent infringement and remedies therefor, and Buyer waives all other rights.

**13. Disclaimer and Limitation of Express Warranties.** There are no express warranties other than those contained in the Agreement. Any representations as to performance

and other matters, except as contained in the Agreement, were for illustrative purposes only and do not constitute a warranty. Whether or not the Goods are to be used exclusively by Buyer, there shall be no third party beneficiaries to the express warranties contained herein. Seller does not warrant any portion of the Goods not manufactured or not furnished by Seller (whether or not specified by Buyer), but Seller shall assign to Buyer upon request all assignable warranties of Seller's suppliers related to such Goods. All descriptions, shipping specifications and illustrations of the Goods or Seller and its quality and other systems and capabilities in catalogues, brochures and price lists or otherwise provided by Seller are intended for general guidance only and Seller is not responsible for any errors or omissions therein or for any loss or damage resulting from reliance on them. Seller does not warrant that it or the Goods are in compliance with any entity, organization or industry standards, guidelines, or procedures unless specifically contained in the Agreement.

**14. Remedy and Limitation of Seller's Liability.**

A. Repair or Replace Remedy. Defective or non-conforming Goods or parts thereof discovered during the warranty period shall be repaired or replaced by Seller without any additional charge, subject to the terms hereof. The warranty obligation of Seller is limited to the repair or replacement at Seller's plant of any part of the Goods which Buyer shall, within the warranty period, return to Seller, with transportation charges prepaid by Buyer, and which Seller shall determine upon examination to be defective or not in conformity with the express warranties contained herein. In lieu of repair or replacement, if Seller elects, Seller may, upon return of such Goods and making a determination of nonconformity or defect, keep the Goods and refund the purchase price. Buyer's remedies shall be limited (even in the event of Seller's default of its warranty obligations) exclusively to those provided in this Section. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. Seller, its subsidiaries, affiliates, agents, or employees shall not be liable to Buyer for incidental, indirect, special, liquidated or consequential damages, including, but not limited to, loss of profits or revenue, loss of use of equipment, costs of replacement or substitute goods or product, costs of capital, additional expenses incurred in the use of equipment or facilities, or claims of third parties. This disclaimer shall apply to consequential damages based upon any cause of action whatsoever asserted against Seller, including one arising out of any breach of warranty, express or implied; guarantee; products liability, negligence; tort; or any other theory of liability. Buyer waives any causes of action or theories of liability including, but not limited to, those arising under contract, tort, strict liability, product liability, statutes, or otherwise, except as specifically provided by the UCC as modified and limited herein. The replacement or repair of Goods by Seller does not give rise to any new warranty except the warranty period provided for herein shall be extended by the length of any period from the date the defective or non-conforming Goods are received by Seller until the date repaired or replacement Goods are delivered to Buyer.

B. Limitation of Liability. In no event will Seller's liability to Buyer for any and all claims, including property damage and personal injury claims, allegedly resulting from breach of contract, tort, or any other theory of liability exceed 10% the amount of the initial price paid to Seller by Buyer.

C. Buyer's Negligence and Insurance. Seller shall not be responsible for losses or damages arising out of the negligence of Buyer, its employees, agents or architects or those of third parties for whom Seller is not responsible, or losses for which Buyer has agreed to

provide insurance. If both Seller and Buyer are negligent and the negligence of both is approximate cause of the event, then in such event each party will be responsible for its portion of the liability or damages (excluding consequential or indirect damages which are disclaimed by Seller) resulting therefrom equal to such party's comparative share of the total negligence.

**D. Delays and Damages - Force Majeure.**

(i) In the event of delays in the performance of Seller's obligations or damages due to conditions beyond Seller's reasonable control, including, but not limited to acts of God, acts of Buyer, or Buyer's customer or of other contractors employed by Buyer, acts of civil or military authority, governmental restrictions, prohibitions and regulations, priorities, fire, storms, strikes, floods, epidemics, quarantine restrictions, war, riot, delays in transportation, car shortages, or Buyer's inability to obtain necessary labor, materials, or manufacturing facilities, the Agreement dates and schedules shall be extended by an equitable period of time and Seller shall be entitled to an equitable adjustment in the Contract price.

(ii) Acceptance of the Goods by Buyer shall constitute a waiver of all claims for damages unless written notice of a claim for delay damages was given to Seller prior to delivery.

(iii) Seller's shipping dates are approximate. Seller will not be responsible for loss or damage arising from delays caused by lack of correct or complete dates from Buyer.

(iv) This Section shall in no event be construed to relieve Buyer from the obligation to pay for Goods shipped by Seller.

**15. Disclaimer of Implied Warranties.** SELLER DISCLAIMS ALL IMPLIED WARRANTIES (OTHER THAN GOOD TITLE) INCLUDING BUT NOT LIMITED TO THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NON-INFRINGEMENT. There are no warranties which extend beyond those express warranties contained in this Agreement. Buyer affirms that it has not relied upon Seller's skill nor judgment to select or furnish Goods for any particular purpose beyond the specific express warranties in this Agreement. Seller does not warrant the Goods will comply with the requirements of any safety or environmental code or regulation of any federal, state, municipality or other jurisdiction beyond the specific express warranties in this Agreement.

**16. Parts, Service and Training Performed by Seller.** All warranty and non-warranty parts, labor, service, software, and training, if any, provided by Seller or its agents and contractors (including those provided under purchase orders subsequent to the Agreement) related to the Goods are subject to all limitations and disclaimers of warranties and remedies provided in the Agreement. Seller may have access to the Goods during or after installation of the Goods. Seller is not under any duty to inspect the Goods for any defects or any improper use or modification of the Goods nor to correct or advise Buyer of any such condition, use or modification, which is observed. Any notification which may be given is voluntary and subject to all limitations and disclaimers in the Agreement.

**17. User's Responsibility for Safety.**

A. Responsibility for Safety. It is Buyer's or other user's responsibility to provide all proper devices, training, and means that may be necessary to effectively protect all personnel from serious bodily injury which otherwise may result from the method of particular installation, use, or service of the Goods. Manuals furnished by Seller (if any); ANSI Safety Standards; OSHA and similar state regulations; and other sources should be used by Buyer to insure the safe installation, use and service of the Goods.

B. OSHA. Seller must be advised by Buyer or other users if they desire specific modifications in the Goods required for compliance with OSHA or other standards. A quotation will be submitted for such requested modifications.

C. Buyer's Duty to Comply with Law. Goods designed and manufactured by Seller are capable of being installed, used, and serviced in a safe manner, but Seller cannot warrant their safe use under all circumstances. BUYER MUST INSTALL, USE, AND SERVICE THE GOODS IN A SAFE AND LAWFUL MANNER IN COMPLIANCE WITH APPLICABLE HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND LAWS AND GENERAL INDUSTRY STANDARDS OF REASONABLE CARE.

D. Seller Supplied Safety Devices. Seller will supply such safety devices or fire protection equipment as is specified in The Agreement. If Buyer desires or requires through local, state, or insurance underwriter's specifications or regulations, other additional safety devices or equipment, Seller will provide a quotation, to furnish them at Buyer's cost.

**18. Indemnification.**

A. Buyer's General Indemnity. Buyer shall indemnify Seller from any and all third party claims, damages, and expenses (including reasonable attorney fees) under theories of tort, product liability, negligence (ordinary or gross), warranty, contract, statute, or otherwise arising out of the use, storage, sale, processing or other disposition of the Goods, supplies or materials used in connection with the Goods, or parts manufactured with the Goods, if the action or inaction of Buyer or its employees, customers or agents, or Buyer's design specifications, were a material or proximate cause of injuries or damages giving rise to claims against Seller.

B. Buyer's Indemnity for Personal Injury. Buyer shall use and shall require its employees to follow proper safe installation procedures in accordance with general industry standards and as set forth in manuals and instruction information furnished by Seller, if any. If Buyer fails to comply with the obligations set forth in this Subsection, Buyer shall indemnify and save Seller harmless from any liability or obligation incurred by Seller to persons injured directly or indirectly in connection with the operation of the Goods and all warranties of Seller shall become automatically void. Buyer shall notify Seller promptly, and in any event within thirty (30) days, of any accident or malfunction involving Goods which results in personal injury or damage to property and shall cooperate fully with Seller in investigating to determine the cause of such accident or malfunction, including allowing Seller access to the Goods and Buyer's reports regarding the Goods for Seller's inspection. If Buyer fails to give such notice to Seller and so cooperate, Buyer shall indemnify Seller from any claims arising from such accident or malfunction.

C. Indemnification by Buyer for Buyer's Goods. Buyer shall indemnify Seller for, and hold Seller harmless from, all costs and expenses incurred by Seller, including, without limitation, costs of investigation, attorney's fees, and amounts paid in settlement or satisfaction of claims, proceedings, or judgments, in connection with all claims and proceedings against Seller based upon claimed defects in design in any Goods manufactured for Buyer by Seller to Buyer's specifications or design.

**19. Cancellation and Breach.**

A. Buyer's Right to Cancel. Buyer may cancel its order for the Goods prior to their completion by immediate payment to Seller of Seller's cost of manufacture and liquidated damages (including labor, engineering, materials, equipment time, and overhead) computed using Seller's standard internal costing procedures, plus 15% of the sale price of the Goods. Cost of manufacture shall include all materials or services which Seller has ordered and which cannot be canceled and all costs incurred in canceling material and service orders which can be canceled. The parties acknowledge the great difficulty of proving damages for the cancellation of products such as the Goods and the reasonableness of this liquidated damages provision.

B. Seller's Remedies for Buyer's Breach. If Buyer defaults in the performance of its obligations, if Buyer advises Seller that it will default in the performance of its obligations, or if any action is started by or against Buyer seeking the appointment of a trustee or receiver or the entry of an order for debtor's relief for Buyer, Seller may cease performance of its obligations, recover Goods in transit or delivered, disable delivered Goods, and otherwise enforce its remedies for Buyer's default.

C. Cumulative Rights. All rights granted to Seller and all limitations in favor of Seller in the Agreement and by law are cumulative, provided Seller shall be entitled to only a single full recovery.

D. Good Faith Actions. Seller shall not be liable for any action taken pursuant to a good faith exercise of any of its rights under the Agreement or law.

**20. Consequential, Incidental, and Other Damages.** BUYER AND THIRD PARTIES SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES, AS DEFINED IN THE UCC OR OTHERWISE. This limitation shall be enforced regardless of whether Seller has defaulted in its warranty or other obligations. Any legal inability to limit or restrict the right of Buyer or a third party to such damages shall not affect the right of Seller to indemnification hereunder, and under no circumstance shall Buyer recover more than the purchase price.

**21. Security Interest, Power of Attorney.**

A. Grant. In addition to any security interest granted by the UCC or law, Buyer hereby grants a security interest to Seller in all Goods and documents related thereto and proceeds and products therefrom to secure all obligations of Buyer to Seller, whether or not arising under the Agreement. Buyer shall sign financing statements evidencing the security interest as reasonably requested by Seller, or Seller may file a copy of the Agreement or portion thereof as a financing statement. Buyer grants Seller an irrevocable power of attorney to sign



Buyer's name to a financing statement if necessary or convenient to perfect Seller's security interest. Buyer shall provide a landlord's waiver of any lien rights at the premises to which the Goods are to be installed. In case of a default by Buyer, Seller may peaceably enter the premises of Buyer and others to repossess all Goods in which it has a security interest. In case of a default by Buyer, Buyer hereby irrevocably appoints Seller as its agent to obtain possession of the Goods and documents related thereto. Buyer shall not sell, exchange, transfer, convey, mortgage, pledge, hypothecate, or grant a security interest in any Goods which are the subject to this Agreement if payment therefor shall not have been made in full to Seller.

B. **Mechanic's Liens.** To the fullest extent permitted by law, Buyer assigns and transfers to Seller all of Buyer's right, title and interest in and to any mechanic's lien, stop notice, design professional's lien, bond right, and any action related to the same, arising from or related to any labor, services, materials or equipment provided to Buyer by Seller. Buyer shall hold all monies received on account of any labor, services, materials or equipment provided to Buyer by Seller in constructive trust and otherwise earmarked for the exclusive benefit of Seller. Buyer shall hold all monies received on account of any mechanic's lien, stop notice, design professional's lien, bond right, and any action related to same in constructive trust and otherwise earmarked for the exclusive benefit of Seller. Buyer shall not release or compromise any mechanic's lien, stop notice, design professional's lien, bond right, and any action related thereto without the prior, written consent of Seller. This provision, however, does not release Buyer from making timely payment to Seller.

**22. Buyer's Property.** Buyer shall insure all materials, fixtures, tooling, and other property delivered to Seller by or at the direction of Buyer against all risks and waives subrogation in the event of loss of or damage to such property.

**23. Solvency of Buyer.**

A. **Solvency.** Buyer represents that it is solvent and able to pay the price for the Goods, and that all financial and business information given to Seller is correct. If Buyer becomes insolvent before delivery of the Goods, it shall notify Seller. Acceptance of delivery shall be a reaffirmation at delivery of Buyer's solvency, and that there has not been a material adverse change in such information.

B. **Seller's Insecurity.** If, at any time, reasonable grounds for insecurity arise with respect to Buyer's performance of its payment or other obligations hereunder, Seller may cease performance of its obligations and demand immediate payment in full or financial security for such payment or other obligations. Seller may require that Buyer post security for any or all amounts to be paid if Seller has a good faith doubt as to Buyer's ability to make prompt payment, and if such security is not posted Seller shall have the right to cease performance of its obligations and enforce its remedies for Buyer's default.

**24. United States Government Regulations.** Buyer shall not engage in any transaction with respect to the Goods, by way of resale, lease, shipment or otherwise, which violates any statute or regulation of the United States of America.

**25. Proprietary & Confidential Materials.**

A. Ownership of Intellectual Property. All drawings, patterns, specifications and information included in Seller's Proposal or the Agreement, and all other information otherwise supplied by Seller as to design, manufacture, erection, operation and maintenance of the equipment, shall be the proprietary and confidential property of Seller and shall be returned to Seller at its request. Buyer shall have no rights in Seller's proprietary and confidential property and shall not disclose such proprietary and confidential property to others or allow others to use such property, except as required for Buyer to obtain service, maintenance, and installation for the equipment purchased from Seller. Specifically, Buyer agrees that no drawings, specifications or information included in Seller's Proposal or the Agreement shall be used by Buyer for competitive bidding or similar purposes without Seller's consent and Buyer shall not reproduce or build assemblies or process systems per Seller's design drawings without explicit approval by Seller.

B. Non-Disclosure. Buyer shall hold in confidence and shall not disclose, divulge, or publish to any person, or use or copy any trade secret, process, record, plan, projection, information pertaining to customers or prospective customers, financial information, marketing strategies, or any other confidential or proprietary information of Seller (including the terms and conditions of the Agreement or any other agreement between Buyer or Seller) acquired or in connection herewith, or disclosed or transmitted by Seller or any of its agents, employees, or affiliates, except as authorized in writing by Seller, and Buyer shall keep, and shall require its officers, directors, employees, and agents to keep such information confidential.

C. Disclosures to Seller. Buyer acknowledges that any information disclosed to Seller has not and will not be considered by Buyer to be confidential or a trade secret unless clearly and conspicuously noted on the disclosure, or in some other writing delivered to Seller at or prior to the time of the disclosure. Seller is not obligated to furnish detailed or shop working drawings, engineering calculations, computer programs, or other information for any Goods or part thereof.

D. Survival. This Section shall survive the termination of the Agreement and be in effect as long as Buyer has possession of any of Seller's proprietary or confidential information.

**26. Fair Labor Standards Act.** Seller certifies that any Goods produced in the United States shall be produced in compliance with all applicable requirements of Sections 6, 7 and 12 of the U.S. Fair Labor Standards Act, as amended, and of the regulations and orders of the United States. Department of Labor issued under Section 14 thereof. No other certifications or waivers regarding payments to Seller's suppliers or laborers are required.

**27. Time for Bringing Action.** Any proceeding by Buyer for breach of the Agreement or any other right against Seller arising from or in connection with the payment cannot be filed nor maintained unless: (i) it is commenced within one (1) year after the cause for action has accrued; (ii) Buyer has given timely written notice to Seller of its claim as provided herein; and (iii) Buyer deposits the unpaid portion of the purchase price with the tribunal pending final adjudication. An action for breach of the Agreement shall accrue no later than shipment of the Goods whether or not installation or other post shipment services are required by the Agreement.

**28. Arbitration.** All controversies and claims arising out of or relating to the Agreement, or the breach thereof, shall be settled solely by arbitration held in Oakland County, Michigan, in accordance with the commercial rules of the American Arbitration Association, except Seller may elect to institute, prior to formation of the arbitration panel, with an action for a claim and delivery or replevin action to enforce its interests in the Goods, and Seller may continue at all times to proceed to enforce its lien rights, bond rights, and other rights against third parties who may have some liability related to Seller's performance. Judgment upon any arbitration award may be entered in any court of record having jurisdiction thereof. No demand for arbitration hereunder may be filed by Buyer as a claim or counterclaim if Buyer has not given timely written notice of its claim to Seller or if more than one (1) year has expired from the date of the cause of action accrued, as provided in the Agreement. The arbitrator(s) may enter an interim award that the Goods be returned to Seller for appropriate disposition and the application of any proceeds to amounts owed to Seller. Upon the filing of a demand for arbitration by Seller or Buyer, Buyer shall deposit with the arbitrator(s) the unpaid balance of the purchase price to be held in an interest bearing account. If such deposit is not made, the arbitrator(s) shall enter a final award against Buyer in the amount of the unpaid purchase price and other amounts owed by Buyer to Seller under the Agreement. The arbitrator(s) shall be bound by the terms of the Agreement and shall not apply any principles of equity nor allow any claims not permitted by the Agreement. The arbitrator(s) may include the arbitration fees in an award.

**29. Assignment.** No right or interest in the Agreement may be assigned by Buyer without the prior written consent of Seller. Any assignment attempted by Buyer shall be void and ineffective for all purposes unless made in conformity with this Section.

**30. Claims.** COMMUNICATIONS CONCERNING DISPUTED DEBTS OR OTHER CLAIMS, INCLUDING AN INSTRUMENT TENDERED AS FULL SATISFACTION OF A DEBT OR CLAIM MUST BE SENT TO THE PRESIDENT OF SELLER.